

117TH CONGRESS  
1ST SESSION

# S. 2031

To preserve access to lawful content and prevent discrimination and unfair methods of competition on the internet, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 10, 2021

Mr. WICKER introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To preserve access to lawful content and prevent discrimination and unfair methods of competition on the internet, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-  
2 tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Promoting Rights and  
5 Online Speech Protections to Ensure Every Consumer is  
6 Heard Act” or the “PRO-SPEECH Act”.

7 **SEC. 2. PRESERVING ACCESS TO LAWFUL CONTENT.**

8       (a) IN GENERAL.—Subject to subsection (b), an  
9 internet platform may not engage in a practice that does  
10 any of the following:

1                             (1) Blocks or otherwise prevents a user or entity  
2                             from accessing any lawful content, application,  
3                             service, or device that does not interfere with the  
4                             internet platform's functionality or pose a data privacy or data security risk to a user.

6                             (2) Degrades or impairs the access of a user or entity to lawful internet traffic on the basis of content, application, service, or use of a device that does not interfere with the internet platform's functionality or pose a data privacy or data security risk to a user.

12                         (b) EXCEPTIONS.—

13                         (1) SMALL INTERNET PLATFORMS.—The prohibitions under subsection (a) shall not apply to a small internet platform unless—

16                         (A) the Commission determines that the benefits of expanding the application of such prohibitions to 1 or more small internet platforms outweigh the costs; and

20                         (B) the Director of the Office of Management and Budget approves such cost-benefit analysis and publishes such approval in the Federal Register.

24                         (2) PUBLISHERS OF CONTENT, APPLICATIONS, AND SERVICES.—The prohibitions under subsection

1       (a) shall not apply to the extent that an internet  
2       platform publicly proclaims to be a publisher, insofar  
3       as the internet platform is acting as a publisher, of  
4       any particular content, application, or service.

5       **SEC. 3. NONDISCRIMINATION.**

6       An internet platform may not take any action against  
7       a user or entity based on racial, sexual, religious, political  
8       affiliation, or ethnic grounds.

9       **SEC. 4. PROHIBITIONS ON UNFAIR METHODS OF COMPETI-**  
10                   **TION.**

11       (a) IN GENERAL.—An internet platform may not en-  
12       gage in an unfair method of competition against any other  
13       internet platform (as determined by the Commission  
14       under the Federal Trade Commission Act (15 U.S.C. 41  
15       et seq.)).

16       (b) PRESUMED UNFAIR METHODS OF COMPETI-  
17       TION.—For purposes of subsection (a), the following ac-  
18       tions shall be presumed to be an unfair method of competi-  
19       tion:

20                   (1) BLOCKING OR PROHIBITING USE.—Any ac-  
21       tion taken by a large internet platform that wholly  
22       blocks or prohibits an internet platform that com-  
23       petes with the large internet platform (or any affil-  
24       iate of the large internet platform) from making use  
25       of the large internet platform.

1                             (2) UNREASONABLE DISCRIMINATION.—Any ac-  
2                             tion taken by a large internet platform that unre-  
3                             asonably discriminates against an internet platform  
4                             that competes with the large internet platform (or  
5                             any affiliate of the large internet platform).

6                             (c) DETERMINATION OF UNFAIR METHODS OF COM-  
7                             PETITION.—The Commission may determine that an ac-  
8                             tion taken by a large internet platform is presumed to be  
9                             an unfair method of competition if—

10                             (1) the Commission establishes that—  
11                                 (A) such action by a large internet plat-  
12                             form—  
13                                 (i) is anti-competitive and likely to re-  
14                             duce competition, reduce quality of service,  
15                             or decrease innovation; and  
16                                 (ii) is not likely to be remedied with-  
17                             out government intervention; and  
18                                 (B) the benefits of such a determination  
19                             outweigh the costs; and  
20                             (2) the Director of the Office of Management  
21                             and Budget approves such cost-benefit analysis and  
22                             publishes such approval in the Federal Register.

23                             **SEC. 5. TRANSPARENCY.**

24                             (a) REQUIRED DISCLOSURES.—

1                             (1) IN GENERAL.—Subject to subsection (b), an  
2                             internet platform shall disclose, on a publicly avail-  
3                             able and easily accessible website, accurate informa-  
4                             tion regarding the platform management practices,  
5                             performance characteristics, and commercial terms  
6                             of service of its app store, cloud computing service,  
7                             operating system, search engine, or social media net-  
8                             work sufficient to enable a reasonable user to make  
9                             an informed choice regarding the purchase or use of  
10                            such service and to develop, market, and maintain a  
11                            product or service on the internet platform.

12                            (2) REQUIRED INFORMATION.—The informa-  
13                             tion to be disclosed pursuant to paragraph (1) shall  
14                             include the following:

15                             (A) PLATFORM MANAGEMENT PRAC-  
16                             TICES.—Information regarding the platform  
17                             management practices of an internet platform  
18                             shall include the following:

19                                 (i) GENERAL PRACTICES.—A descrip-  
20                             tion of any content management or data  
21                             management practices.

22                                 (ii) APP STORE, OPERATING SYSTEM,  
23                             SEARCH ENGINE, OR SOCIAL MEDIA NET-  
24                             WORK.—With respect to an app store, op-  
25                             erating system, search engine, or social

1 media network, a description of any prac-  
2 tice—

3 (I) regarding how the internet  
4 platform—

5 (aa) curates and targets  
6 content to users;

7 (bb) promotes content, serv-  
8 ices, or products, including its  
9 own content, services, or prod-  
10 ucts;

11 (cc) moderates content; or  
12 (dd) determines whether to  
13 demonetize a user's use of the  
14 internet platform by any means;  
15 or

16 (II) that directly or indirectly fa-  
17 vors certain data or content over other  
18 data or content, including through use  
19 of techniques such as content place-  
20 ment or prioritization—

21 (aa) to benefit an affiliate;

22 or

23 (bb) in exchange for consid-  
24 eration, monetary or otherwise.

## 1   (iii) CLOUD COMPUTING SERVICE.—

2   With respect to a cloud computing service,  
3   a description of any practice—

4   (I) regarding congestion management,  
5   application-specific behavior,  
6   device attachment, or data privacy  
7   and data security; or

8   (II) that determines whether—

9   (aa) any content, applica-  
10   tion, or service is lawful; and

11   (bb) a device interferes with  
12   the cloud computing service's  
13   functionality or poses an unre-  
14   asonable data privacy or data se-  
15   curity risk to a user.

16   (iv) PUBLISHERS.—

17   (I) INTERNET PLATFORMS.—

18   With respect to an internet platform  
19   that publicly proclaims to be a pub-  
20   lisher, a description of any practice  
21   that blocks or otherwise prevents a  
22   user or entity from accessing any law-  
23   ful content, application, service, or de-  
24   vice that does not interfere with the  
25   internet platform's functionality or

1                   pose a risk of data privacy or data se-  
2                   curity to a user.

3                   (II) AFFILIATES.—With respect  
4                   to an internet platform that publicly  
5                   proclaims to be a publisher and is an  
6                   affiliate of a cloud computing service  
7                   or operating system, a description of  
8                   any practice that degrades or impairs  
9                   a user or entity's access to lawful  
10                  internet traffic on the basis of con-  
11                  tent, application, service, or use of a  
12                  device that does not interfere with the  
13                  internet platform's functionality or  
14                  pose a risk to the data privacy or data  
15                  security of a user.

16                  (B) PERFORMANCE CHARACTERISTICS.—  
17                  Information regarding the performance charac-  
18                  teristics of an internet platform shall include  
19                  the following:

20                  (i) GENERAL CHARACTERISTICS.—A  
21                  general description of the service, including  
22                  the service technology.

23                  (ii) CLOUD COMPUTING SERVICE.—  
24                  With respect to a cloud computing service,  
25                  a description of—

1                             (I) the expected and actual ac-  
2                             cess speed and latency; and

3                             (II) the capability of the service  
4                             to support real-time applications.

5                             (iii) SERVICE WITH REQUIRED AP-  
6                             PROVAL.—With respect to an app store,  
7                             cloud computing service, or operating sys-  
8                             tem that requires approval before allowing  
9                             an application to use the internet plat-  
10                           form—

11                            (I) the average time for a devel-  
12                           oper to receive such approval after ini-  
13                           tial submission; and

14                            (II) the timeline for the internet  
15                           platform to resolve complaints and the  
16                           outcome of any such resolution.

17                           (C) COMMERCIAL TERMS.—Information re-  
18                             garding the commercial terms of an internet  
19                             platform shall include a description of the fee  
20                             disclosures, privacy practices, and redress op-  
21                             tions for users, including the following:

22                            (i) USAGE-BASED FEES.—With re-  
23                             spect to a cloud computing service, any  
24                             usage-based fees or fees for early termi-  
25                             nation or additional network services.

1                             (ii) APPROVAL FEES.—With respect  
2                             to an app store, cloud computing service,  
3                             or operating system that requires approval  
4                             before allowing an application to use the  
5                             internet platform, any fees charged to  
6                             those seeking such approval.

7                             (iii) THIRD-PARTY FEES.—With re-  
8                             spect to an app store, cloud computing  
9                             service, or operating system, any fees  
10                          charged to or by third parties associated  
11                          with a user's decision to purchase an appli-  
12                          cation or other content that uses such  
13                          internet platform.

14                          (iv) PRIORITIZATION FEES.—With re-  
15                          spect to an app store, operating system,  
16                          search engine, or social media network,  
17                          any fees charged for the placement or  
18                          prioritization of any content or application.

19                          (v) PRIVACY PRACTICES.—A descrip-  
20                          tion of any data privacy practice that en-  
21                          tails the inspection of user-generated con-  
22                          tent or other internet platform information  
23                          and whether such content or information is  
24                          stored, provided to third parties, or used  
25                          for non-platform management purposes.

1                             (vi) COMPLAINT RESOLUTION PRAC-  
2                             TICES.—A description of any practice for  
3                             resolving the complaint or question of a  
4                             user.

5                             (b) APPLICABILITY TO SMALL INTERNET PLAT-  
6                             FORMS.—The requirements under subsection (a) shall not  
7                             apply to a small internet platform unless—

8                                 (1) the Commission determines that the bene-  
9                             fits of expanding the application of such require-  
10                             ments to 1 or more small internet platforms out-  
11                             weigh the costs; and

12                                 (2) the Director of the Office of Management  
13                             and Budget approves such cost-benefit analysis and  
14                             publishes such approval in the Federal Register.

15 **SEC. 6. ENFORCEMENT.**

16                             (a) ENFORCEMENT AUTHORITY.—

17                                 (1) UNFAIR AND DECEPTIVE ACTS OR PRAC-  
18                             TICE.—A violation of section 2, 3, or 5 shall be  
19                             treated as an unfair and deceptive act or practice  
20                             proscribed under section 5(a) of the Federal Trade  
21                             Commission Act (15 U.S.C. 45(a)).

22                                 (2) UNFAIR METHODS OF COMPETITION.—Any  
23                             person who violates section 4 shall be liable for en-  
24                             gaging in an unfair method of competition under

1       section 5(a) of the Federal Trade Commission Act  
2       (15 U.S.C. 45(a)).

3       (b) POWERS OF THE COMMISSION.—

4           (1) IN GENERAL.—Notwithstanding any other  
5       provision of law, the Commission shall enforce this  
6       Act in the same manner, by the same means, and  
7       with the same jurisdiction, powers, and duties as  
8       though all applicable terms and provisions of the  
9       Federal Trade Commission Act (15 U.S.C. 41 et  
10      seq.) were incorporated into and made a part of this  
11      Act.

12          (2) PRIVILEGES AND IMMUNITIES.—Notwith-  
13       standing any other provision of law, any person who  
14       violates this Act shall be subject to the penalties and  
15       entitled to the privileges and immunities provided in  
16       the Federal Trade Commission Act (15 U.S.C. 41 et  
17      seq.).

18          (3) AUTHORITY PRESERVED.—Nothing in this  
19       Act shall be construed to limit the authority of the  
20       Commission under any other provision of law.

21       (c) COMPLAINTS TO THE COMMISSION.—

22           (1) IN GENERAL.—Any individual alleging a  
23       violation of this Act may submit to the Commission  
24       a complaint which briefly states the facts sur-  
25       rounding such violation.

1                             (2) NOTICE TO INTERNET PLATFORM.—Upon  
2 receiving a complaint described in paragraph (1),  
3 the Commission shall forward a statement of the  
4 complaint to the internet platform that is the subject  
5 of the alleged violation.

6                             (3) REQUIREMENT TO ADDRESS COMPLAINT.—  
7 Upon receiving a forwarded complaint under para-  
8 graph (2), the internet platform shall, within a rea-  
9 sonable time (as specified by the Commission), ei-  
10 ther—

11                             (A) make a reparation for any injury al-  
12 leged to have been caused in the complaint filed  
13 under paragraph (1) and notify the Commission  
14 of such reparation; or

15                             (B) submit to the Commission a written  
16 response to the complaint.

17                             (4) REPARATION.—If the internet platform  
18 makes a reparation under paragraph (3)(A) to the  
19 satisfaction of the Commission, the Commission  
20 shall relieve the internet platform of liability to the  
21 complainant for the particular violation of law thus  
22 complained of.

23                             (5) INVESTIGATION.—

24                             (A) IN GENERAL.—If the internet platform  
25 does not make a sufficient reparation under

1           paragraph (3)(A), or if there appears to be any  
2           reasonable ground for investigating such com-  
3           plaint, the Commission shall investigate the  
4           matters complained of in such manner and by  
5           such means as it shall deem proper.

6           (B) DIRECT DAMAGE.—No complaint shall  
7           at any time be dismissed because of the absence  
8           of direct damage to the complainant.

9           (C) INVESTIGATION CONCLUSION.—With  
10          respect to any investigation conducted pursuant  
11          to subparagraph (A), the Commission shall  
12          issue an order concluding such investigation not  
13          more than 5 months after the date on which the  
14          complaint was filed.

15 **SEC. 7. RELATIONSHIP BETWEEN FEDERAL AND STATE  
16           LAW.**

17          No State or political subdivision of a State may  
18          adopt, maintain, enforce, or continue in effect any law,  
19          regulation, rule, requirement, or standard that conflicts  
20          with the requirements of this Act.

21 **SEC. 8. DEFINITIONS.**

22          In this Act:

23           (1) AFFILIATE.—The term “affiliate” means a  
24          person that directly or indirectly owns or controls, is

1       owned or controlled by, or is under common owner-  
2       ship or control with, another person.

3                 (2) APP STORE.—The term “app store” means  
4       a digital distribution platform for computer applica-  
5       tions that includes at least 1 application from a per-  
6       son unaffiliated with the operator of the digital dis-  
7       tribution platform.

8                 (3) CLOUD COMPUTING SERVICE.—The term  
9       “cloud computing service” means a service offering  
10      on-demand network access to a shared pool of  
11      configurable computing resources (such as any net-  
12      work, server, storage, application, or service) that  
13      generally can be provisioned with minimal manage-  
14      ment effort or service provider interaction.

15                 (4) COMMISSION.—The term “Commission”  
16      means the Federal Trade Commission.

17                 (5) INTERNET PLATFORM.—The term “internet  
18      platform” means an entity that owns or operates, ei-  
19      ther directly or through an affiliate, an app store, a  
20      cloud computing service, an operating system, a  
21      search engine, or a social media network.

22                 (6) LARGE INTERNET PLATFORM.—The term  
23      “large internet platform” means an internet plat-  
24      form with equal to or more than—

25                         (A) 100,000,000 global active users; or

1                                 (B) \$500,000,000 in annual revenues, in-  
2                                 cluding direct user fees, advertising revenues, or  
3                                 other revenues associated with an app store, a  
4                                 cloud computing service, an operating system, a  
5                                 search engine, or a social media network.

6                                 (7) OPERATING SYSTEM.—The term “operating  
7                                 system” means a computer program, implemented in  
8                                 either software or firmware, that acts as an inter-  
9                                 mediary between users of a computer and the com-  
10                                 puter hardware, providing an environment in which  
11                                 a user can execute, operate, or otherwise utilize an  
12                                 application.

13                                 (8) OWN.—The term “own” means to hold an  
14                                 equity interest (or the equivalent thereof) of more  
15                                 than 10 percent.

16                                 (9) SEARCH ENGINE.—The term “search en-  
17                                 gine” means a technology that enables a user to ini-  
18                                 tiate a search query for particular information using  
19                                 the internet and that is capable of returning at least  
20                                 1 search result unaffiliated with the owner or oper-  
21                                 ator of the search engine.

22                                 (10) SMALL INTERNET PLATFORM.—The term  
23                                 “small internet platform” means an internet plat-  
24                                 form that has—

1                             (A) fewer than 100,000,000 global active  
2                             users; and

3                             (B) less than \$500,000,000 in annual reve-  
4                             nues, including direct user fees, advertising rev-  
5                             enues, or other revenues associated with an app  
6                             store, a cloud computing service, an operating  
7                             system, a search engine, or a social media net-  
8                             work.

9                             (11) SOCIAL MEDIA NETWORK.—

10                            (A) IN GENERAL.—The term “social media  
11                             network” means an internet-enabled network  
12                             that hosts any information, comment, message,  
13                             still image, or moving image posted by a user  
14                             to facilitate interpersonal communication be-  
15                             tween or among users.

16                            (B) EXCEPTION.—Such term does not in-  
17                             clude electronic mail or an online service, appli-  
18                             cation, or website for which the hosting of such  
19                             information or other content is incidental to the  
20                             provision of news, sports, entertainment, or  
21                             other information not generated by users.

